HON'BLE Mr. JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 6898 and 9305 of 2006

Dated 11th April, 2007

Writ Petition No. 6898 of 2006:

Between

Parimi Srilakshmi …Petitioner

And

State of Andhra Pradesh, rep. By its Principal Secretary, Higher Education, Secretariat, Hyderabad, and ors.

….Respondents

WRIT PETITION No. 9305 OF 2006:

Between
M.Koti Reddy ….Petitioner

And

Director of Collegiate Education, AP, at Hyderabad, and ors

….Respondents.

HON'BLE MR. JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 6898 and 9305 of 2006

COMMON ORDER:

In these Writ Petitions, as common issues on similar set of facts arise for consideration, they are heard together and are being disposed of by this common order.

For the purpose of convenience in disposal of these cases, I refer to the facts narrated in Writ Petition 6898 of 2006.

Writ Petition No. 6898 of 2006 has been filed by a person, who is a Hearing Handicapped un-employee, seeking a direction by way of Writ of Mandamus to the respondents to conduct interviews for the post of Lecturer in History in fifth respondent-college pursuant to their notification dated 20-7-2005, and, further to declare the action of the respondents in taking steps to change the category from Hearing Handicapped to other handicapped as illegal and arbitrary.

Writ Petition No. 9305 of 2006 has been filed by an Orthopedically Handicapped un-employee seeking Writ of Mandamus to declare the action of the fifth respondent therein in not converting the reservation from Hearing Handicapped to Orthopaedically Handicapped while filling up the vacancy of Lecturer in the Department of History as illegal.

Chudi Ranganayakulu College, at Ganapavaram in Chilakaluripet of Guntur District is a private aided college. There was

a special recruitment drive to fill up the various backlog posts of teaching and non-teaching reserved for physically handicapped persons in various educational institutions. Pursuant to the letter dated 10-8-2004 addressed by the Correspondent of the fifth respondent-College seeking permission to fill up certain posts in the said college, the Director of Collegiate Education, Andhra Pradesh vide proceedings No. 738/Admn.VI-2/2005, dated 6-4-2005 granted permission to the management to fill up two teaching posts and two non-teaching posts to clear the backlog vacancies meant for Physically Handicapped persons. So far as teaching posts are concerned, one post of Lecturer in English is reserved for Visually Handicapped person and one post of Lecturer in History is reserved for Hearing Handicapped person. Accordingly, the management of the College has issued notification on 20-7-2005 to fill up the said reserved vacancies. Pursuant to the said notification, the petitioner herein, who is a Hearing Handicapped person had applied for the post of Lecturer in History and the management of the college had fixed the date of interviews as 9-9-2005. But, however, as on the above said date, the interviews to the post of Lecturer in History, which is reserved for Hearing Handicapped person, were postponed in view of the proceedings in letter No. S-II/763/2003, dated 8-9-2005 issued by the Commissioner, Disabled Welfare & State Commissioner under Persons with Disabilities Act, 1995. The said letter was addressed based on the representation submitted by the petitioner in Writ Petition No. 9305 of 2006 on 8-9-2005 in which he had represented that the Hearing Impaired persons will not be able to function as Lecturer in view of the communication problem due to hearing impairment. Based on the said representation, on the same day, the Commissioner,

Disabled Welfare addressed letter No.S-II/763/2003 to the Regional Joint Director, Collegiate Education, Guntur, in which, he had directed to submit necessary proposals for conversion of the nature of reservation from Hearing Handicapped to Visually Handicapped or Orthopaedically Handicapped, and, also directed to stop the further steps for recruitment to the post of Lecturer in History.

In this case, it is the case of the petitioner, that there is no authority for the fourth respondent, Commissioner, Disabled Welfare and State Commissioner under the Persons with Disabilities Act, 1995, to stop the process of selections. It is stated that when permission was granted by the competent authority to fill up the vacancy, it is not open for the Commissioner, Disabled Welfare to address letter dated 8-9-2005 to the Regional Joint Director, Collegiate Education, Guntur either for stopping the process of selections pursuant to the notification issued on 20-7-2005 by the fifth respondent-college, or, to direct the concerned to send proposals for conversion of the category of post reserved for Hearing Handicapped to Visually Handicapped or Orthopaedically Handicapped. It is the further case of the petitioner that in the recruitments made by all the Departments of Education and also the Andhra Pradesh Public Service Commission, reservation is provided to the Hearing Handicapped persons while filling up the posts of Lecturers. and, as such, there is no authority for the Commissioner, Disabled Welfare, to address letter dated 8-9-2005 to the Regional Joint Director, Collegiate Education, Guntur to stop the process of selections pursuant to the notification dated 20-7-2005. It is also the case of the petitioner that pursuant to the reference of the Commissioner, Disabled Welfare in his letter dated 14-11-2005, the petitioner was examined by the

Superintendent, Government E.N.T. Hospital, Koti, Hyderabad and in spite of the opinion of the competent medical authority that the petitioner is eligible and qualified to hold the post of Lecturer, no further steps are being taken.

Counter affidavit is filed by the Director of Collegiate Education on behalf of the respondents 1 to 3. It is averred in the counter affidavit as follows: 3% of vacancies are reserved for Physically Handicapped. It is stated that in the roaster for filling up of the vacancies, 6th post in the cycle is reserved for the Visually Handicapped, 31st post in the cycle is reserved for the Hearing Impaired and the 56th post in the cycle is reserved for Orthopaedically Handicapped. The managements of the private aided colleges have not filled up the posts reserved for the Physically Handicapped, and, as such, the Government has issued orders to clear the backlog vacancies of teaching and non-teaching reserved for the Physically Handicapped under the special recruitment drive. Hence, while permitting the colleges to fill up the two teaching posts in the Departments of English and History, the first post of lecturer in English was earmarked to the Visually Handicapped and the second post being the Lecturer in History was permitted to be filled up by a Hearing Impaired candidate. It is stated that though interviews were scheduled to be held on 9-9-2005, but however, they were postponed as per the instructions received from the Office of the Commissioner, Disabled Welfare, AP, Hyderabad on the ground that Hearing Impaired candidates are not suitable for teaching posts due to their impairment of hearing. While admitting that the petitioner herein is a Hearing Handicapped candidate, he was called for interview on 9-9-2005, it is stated that there are no specific instructions/orders of the

Government that Hearing impaired candidates are not suitable for teaching posts and as such permission was accorded to fill up the post of Lecturer in History as per the rotation in the communal roster.

Separate counter affidavit is filed by the Commissioner, Disabled Welfare, stating that the Government has issued orders in G.O.Ms.No. 145, dated 28-9-1993 identifying the jobs suitable for the three categories of disabled and as per the jobs identified, there is no identification made in respect of Hearing Handicapped or partially deaf persons for the posts of Lecturers/teachers or any other teaching category. It is stated that the petitioner in Writ Petition No. 9305 of 2006 had filed representation on 8-9-2005 stating that Hearing Handicapped candidates are not suitable for appointment to the posts of Lecturer and requested for issuance of directions for conversion of the post reserved for Hearing Impaired candidate to that of Orthopaedically Handicapped and based on such representation, letter dated 8-9-2005 was addressed to the Regional Joint Director, Collegiate Education, Guntur to safeguard the rights of the disabled. It is further stated that the post of Lecturer comes under Group 'B', for which there is no identification made by the Higher Education Department for the purpose of effecting reservation. It is averred in the counter affidavit that normally Hearing Impaired persons, because of hearing and speech impairment, will not be able to work as Lecturers and, hence, as per the provisions contained in G.O.Ms.No. 18, dated 1-3-1994, the Regional Joint Director, Collegiate Education, Guntur, was addressed to submit necessary proposals for conversion of the category from Hearing Handicapped to Visually Handicapped or Orthopaedically Handicapped.

Heard Shri P.V.Sanjay Kumar learned counsel appearing for the petitioner in Writ Petition No. 6898 of 2006, Shri C.Raghu, learned counsel for the petitioner in Writ Petition No.9305 of 2006 and the learned Government Pleader at length.

It is submitted by the learned Counsel, Sri P.V. Sanjay Kumar, appearing for the petitioner that in this case, though the petitioner is capable of discharging the functions of Lecturer in History, only on the representation made by the petitioner in Writ Petition No. 9305 of 2006, the entire process was stopped without even examining the suitability of the petitioner to the said post. It is submitted that there is no notification by the Government exempting the said post from the reservation for the category of Hearing Impairment. While implementing the reservation for appointments to the posts of teachers and lecturers in various institutions including that of the A.P. Public Service Commission, it is not open for the respondents to issue any directions curtailing the process of selection for appointment to the post of Lecturer in History by a Hearing Impaired candidate.

On the other hand, it is contended by the learned Government Pleader appearing for the respondents that having regard to the nature of job of the Lecturer, Hearing Impaired persons are not suitable to hold the said post, and, as such, in view of G.O.Ms.No. 18, dated 1-3-1994, the matter has to be referred to Inter Departmental Committee for conversion of the category and thereafter only steps can be taken to fill up the said vacancy.

At the outset, in this case, it is to be noted that 3% vacancies

reserved in favour of Physically Handicapped are earmarked in the equal ratio of one each in favour of Visually Handicapped, Hearing Handicapped and Orthopaedically Handicapped. In the communal roaster, the 6th post in the cycle is reserved for the Visually Handicapped, the 31st post in the cycle is reserved for Hearing Impaired and the 56th post is reserved for Orthopedically Handicapped. As much as the vacancy of Lecturer in History happened to be the 31st point in the cycle, it was reserved for Hearing Impaired and notification was issued accordingly by the management of the college to fill up the vacancy with a Hearing Impaired candidate. Pursuant to the notification, the petitioner had applied and interviews to the said post were scheduled to be held on 9-9-2005. From the counter affidavit, it is clear that the decision to postpone the process of selection is only on the representation filed by the petitioner in Writ Petition No. 9305 of 2006, on 8-9-2005 and consequential issuance of letter on the same day i.e. 8-9-2005 by the Commissioner, Disabled Welfare. Even among the hearing impaired candidates, hearing loss differs from person to person and all cannot be put on equal pedestal. Among the said category, some persons are totally deaf and some are partially deaf. While partially deaf are those who can hear and communicate with the help of hearing aid, whereas the totally deaf cannot hear even with the help of hearing aids. In the instant case, the petitioner is partially deaf and she is certified to be capable of performing the duties of lecturer with the help of hearing aid by a competent medical doctor. Though there is no proper identification or any exemption by any competent authority to exclude the post of Lecturer from the purview of reservation for Hearing Impaired candidates, the Commissioner, Disabled Welfare had issued letter

dated 8-9-2005 solely based on the representation filed by the petitioner in Writ Petition No. 9305 of 2005. On the representation filed by the petitioner, the petitioner was subjected to medical examination in Government E.N.T. Hospital, Koti, Hyderabad, whereafter, it was certified by the Superintendent of the said Hospital that the petitioner will be able to communicate satisfactorily with the help of hearing aid and is eligible for consideration to the post of Lecturer. It is also not in dispute that the post of Lecturer comes under Group-B category. Though prior to coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Government had issued G.O.Ms.No. 145, dated 28-9-1992 identifying certain jobs in the categories of C and D for disabled, but, however, no such steps have been taken in respect of the posts of Lecturers, which are stated to be in the category of Group-B posts. As such, there is no identification in respect of the posts of Lecturers in effecting reservation to the Disabled Persons. Though the Government issued G.O.Ms.No. 18, dated 1-3-1994 constituting Inter Departmental Committee for exempting certain posts from the split of reservation to the Physically Handicapped, but however, such consideration will arise only in the event of taking any decision by the Department for change of category within the quota reserved for Physically Challenged persons. Further, in the year 1995, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted with the primary object of giving effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, and as per Section 33 of the said Act, every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of

which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment, (iii) locomotor disability or cerebral palsy, in the posts identified for each disability. Further, as per the proviso to said Section, the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section. Further, under Section 36 of the Act, if nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

In the case on hand, there is no such identification or any decision by the department concerned for change of category from Hearing Handicapped to Visually Handicapped or Orthopaedically Handicapped. Directions issued by the Commissioner, Disabled Welfare are only based on the representation filed by the petitioner in Writ Petition No. 9305 of 2006. There is no decision taken by the concerned department independently to the effect that petitioner is not suitable to discharge the functions of lecturer. That apart, reacting to the representation made by the petitioner, the Commissioner, Disabled Welfare also referred the petitioner for medical opinion, and the medical authorities certified that the petitioner is able to communicate satisfactorily with the help of hearing aid and is eligible for consideration to the post of lecturer under the category of Hearing Handicapped. In that view of the matter, while it is open for the Selection Committee to take the said medical opinion and all other

material on record into account in the process of making selections and judge the suitability of the persons, but however, it is not open for the Commissioner, Disabled Welfare to declare that the petitioner is not eligible for the post of Lecturer, only based on the representation submitted by the petitioner in Writ Petition No. 9305 of 2006, who is seeking conversion of the said post from the category of Hearing Handicapped to Visually Handicapped or Orthopaedically Handicapped. As much as the notification to fill up the post of Lecturer in History was issued on 20-7-2005 and interviews scheduled to be held on 9-9-2005 were postponed on account of letter dated 8-9-2005 addressed by the Commissioner, Disabled Welfare, I dispose of the Writ Petition directing the management of the College to proceed with the selection process as per the notification dated 20-7-2005 to fill up the post of Lecturer in History by considering the case of the petitioner and other eligible candidates. However, it is made clear that the suitability of the petitioner for the post of Lecturer is to be considered by the Selection Committee on its own, uninfluenced by the letter dated 8-9-2005 addressed by the Commissioner, Disabled Welfare and taking into consideration the medical opinion of the Superintendent, Government ENT Hospital, Koti, Hyderabad and any other material to be produced before the Selection Committee. It is also made clear that if the Selection Committee is of the opinion that the petitioner and other applicants who applied for the post of lecturer pursuant to the notification dated 20-7-2005 are not eligible and suitable for appointment, it may address to the concerned department for change of the category and for seeking approval from the appropriate Government and take steps accordingly.

Subject to above observations and directions, the Writ Petition No. 6898 of 2006 is disposed of.

So far as Writ Petition No. 9305 of 2006, which is filed for conversion of the post of Lecturer in History meant for Hearing Handicapped to Orthopaedically Handicapped, is concerned, when the vacancies were notified, the post of Lecturer in History was correctly notified reserving the same for Hearing Handicapped person as per the communal roster point. The petitioner sought for directions for change of category only on his own assumption that the Hearing Impaired personnel are not eligible for appointment to the posts of Lecturers. As already held supra, it is for the Department to take a decision, in the absence of any decision to exclude the said posts from the purview of any such reservation by the competent authority, as to the eligibility of any particular class of persons for appointment to the posts of Lecturers. Therefore, no direction as sought for can be issued in this writ petition and W.P.No.9305 of 2006 is, therefore, dismissed.

There shall be no order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 11th APRIL, 2007.
MSNR.